Recent Developments in the Law

Vol. No. XVIII
July 6, 1998

In order to keep you abreast of the recent developments in the law, we are reporting the substance of several current decisions of major import in the jurisdictions of Maryland, the District of Columbia and Virginia.

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MARYLAND COURT OF APPEALS

Torts-Duty Owed Under Accountant's Contract: Walpert, Smullian & Blumenthal, P.A. v. Katz, 2000 WL 1737745, CA No. 50 Sept. Term 1998. Accountants may be held liable for negligence to and the economic losses of a non-contractual party when they are aware that the financial reports they prepare are to be used for a particular purpose, that a known party is intended to rely on those reports for that purpose, and some connection with that party exists that is the equivalent of privity, such as knowledge of that party's reliance.

MARYLAND COURT OF SPECIAL APPEALS

Personal Injury-Statutory Cap on Damages, Medical Records: Butler v. James, 2000 WL 1678244, CSA No. 2667 Sept. Term 1999. The filing of a notice of intent to submit medical records or actually submitting them in evidence without supporting testimony under §10-104(c)(2) of the Maryland Code requires that the amount in controversy cannot exceed the statutory limit of $25,000 and estoppes appellee from pursuing a larger damage awarded. A transfer of the case from District Court to Circuit Court does not affect this result.

Evidence-Business Records Exception: State v. Bryant, 2000 WL 1694420, CSA No. 16 Sept Term 1999. Toxicology report introduced at trial which showed that the defendant had a blood alcohol concentration of 216 mgs. per deciliter when he crashed his car, killing his passenger, was inadmissible under Rule 5-803(b)(6) as a business records exception to the hearsay rule because the certification attached to the report was insufficient to form a proper foundation for authentication as a business record under Rule 5-902(a)(11). Specifically, the certification was not given under oath subject to the penalty of perjury, the custodian never certified that the report was made at or near the time of the occurrence of the matters that it sets forth by a person with knowledge of those matters, or that it was made and kept by the regularly conducted business activity as a regular practice. Additionally, the State did not authenticate the report by intrinsic evidence where its expert did not testify that the report was made at or near the time of the tests or that it was made by a person with knowledge.

Workers' Compensation- Employer's Immunity from Suit: Suburban Hospital, Inc. v. Kirson, 2000 WL 1801529, CSA No. 2 Sept. Term 2000. The "dual capacity" theory is not an exception to an employer's immunity set forth in the Labor and Employment Code §9-509, therefore, a tort action filed by a hospital employee against the hospital employer for malpractice after a work-related injury was aggravated by the negligence of the hospital was barred. Under the dual capacity theory, it is incompatible with Maryland law to view the hospital in its capacity as employer and in its capacity as health care provider as discrete legal entities with no relationship to each other, thus hospital is entitled to workers' compensation exclusivity defense with respect to malpractice action brought by nurse.

Hospital's duties to nurse in treatment of injuries sustained in work-related fall were not totally separate from hospital's duties as employer.

Insurance-Scope of Automobile Coverage: Universal Underwriters Ins. Co. v. Lowe, 2000 WL 1673380, CSA No. 2431 Sept. Term 1999. If a permittee allows a second permittee to drive an automobile, in violation of the named insured's express orders forbidding the permittee from authorizing such use by another, the second permittee is not within the coverage if an omnibus clause of an automobile insurance policy.

Corporations-Appointment of Corporate Receiver, Usurpation of Corporate Opportunity: Shapiro v. Greenfield, 2000 WL 1639468, CSA No. 6195 Sept. Term 1998. A transaction in which a corporation entered into a business arrangement with other entities in which certain directors potentially had a direct financial interest did not constitute a usurpation of corporate opportunity but may have been improper under CA §2-419, concerning interested director transactions. The "doctrine of usurpation of corporate opportunity" attempts to preclude a director or officer from appropriating for himself a business opportunity that belongs to the corporation. The "interest or reasonable expectancy test" determines whether an opportunity is a corporate opportunity and focuses on whether the corporation could realistically expect to seize and develop the opportunity; if so, the director or officer may not appropriate it and thereby frustrate the corporate purpose. A focus on a director's ability to exercise independent judgement and the expected influence of a particular relationship on the director is the appropriate subject of inquiry in determining whether a director is to be considered an interested director in a particular transaction. Directors are required to avoid only those self-interested actions which come at the expense of the corporation or its shareholders.

Evidence-Use of Prior Bad Acts: Wilson v. State, 2000 WL 1640932, CSA No. 1892 Sept. Term 1999. Trial court did not prejudice defendant on trial for murdering his infant son when it allowed testimony about the man's infant daughter who died under similar circumstances years earlier, as bad acts that are "highly probative to the crime alleged" are permissible because their value to the fact-finder can outweigh the prejudice inherent in their introduction.

Insurance-Duty to Defend and Indemnify: Zurich Insurance Co. v. Principal Mutual Insurance Co., 2000 WL 1641201, CSA Nos. 1716 & 2327 Sept. Term 1999. Where elevator had been placed back in regular service after testing was conducted by company that had installed it, insurer that issued an owners and contractors protective (OCP) policy to building's owner and management company was not required to indemnify or defend a suit by person injured when the elevator fell. The OCP liability insurance policy excluded coverage for bodily injury if it occurred after the contractor's work out of which the injury or damages arose was put to its intended use by any person; even if the maintenance contractor was going to perform additional elevator repairs or remodeling work. The "potentiality rule states that, if any claims potentially come within the liability policy coverage, the insurer is obligated to defend all claims notwithstanding alternative allegations outside the policy's coverage, until the claims have been limited to ones outside the coverage. Doubts as to whether an allegation indicates the possibility of liability coverage should be resolved in the insured's favor in determining whether a liability insurer owes a duty to defend.

Labor and Employment-Disqualification from Unemployment Insurance Benefits: Johns Hopkins University v. Board of Labor, Licensing and Regulation, 2000 WL 1640896, CSA No. 1862 Sept. Term 1999. Since a showing of intentional or voluntary conduct is not required under Labor and Employment Code §8-1003 and claimant's behavior that resulted his termination was misconduct, even though a product of a mental disorder, the Board of Labor, Licensing and Regulation should have applied LE §8-1003 and imposed a disqualification of benefits for not less than five but not more than ten weeks.

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